

May 8, 2009

By Fax: 212.805.7930

Hon. James C. Francis  
United States Magistrate Judge  
United States Courthouse  
500 Pearl Street, Room 1960  
New York, New York 10007

**Re: Gary Friedrich Enterprises, LLC, et al v. Marvel Enterprises, Inc., et al.,  
08-cv-01533 (BSJ)(JCF)**

Dear Magistrate Judge Francis:

We represent plaintiffs Gary Friedrich Enterprises, LLC and Gary Friedrich in this action which asserts that defendants infringed plaintiffs' copyrights by making and selling "Ghost Rider," a 2007 motion picture, and related merchandise. The Complaint asserts causes of action for federal copyright infringement as well as pendant state statutory and common law claims.

We write to request that the Court schedule a conference pursuant to Rule 16 of the Federal Rules of Civil Procedure so that discovery may commence.

Plaintiffs originally filed their Complaint in this action on April 4, 2007 in the United States District Court for the Southern District of Illinois. On June 8, 2007, defendants collectively moved to dismiss the Complaint for improper venue or, alternatively, to transfer the action to this District. Defendants also moved to dismiss some of the claims asserted in the Complaint, but significantly, did not move to dismiss plaintiffs' copyright infringement claims.

On September 26, 2007, Hon. William D. Stiehl denied the defendants' motion to dismiss but granted the application to transfer the case to this District. After Judge Stiehl denied plaintiffs' motion for reconsideration, the case was transferred to this District, and filed here on February 14, 2008. (ECF Docket No. 1). Plaintiffs then promptly moved to transfer the case from this District to the Eastern District of Missouri. (ECF Docket No. 4).

On September 4, 2008, Your Honor denied plaintiffs' motion to transfer the case to the Eastern District of Missouri. (ECF Docket No. 24). Following that Order, defendants requested that Judge Jones address and decide that portion of defendants' June 8, 2007 motion to partially dismiss the Complaint. On September 25, 2008, Judge Jones issued her Order stating that she would decide defendants' partial motion to dismiss. (ECF Docket No. 25).

Hon. James C. Francis  
United States Magistrate Judge  
May 8, 2009  
Page 2

At that time, plaintiffs had consented to defendants' request that discovery await Judge Jones' decision on defendants' partial motion to dismiss.

Due to the transfer and other motions, this case has now been on file for over two years, with no discovery yet initiated. In light of the Court's docket, it is not known when the ruling on defendants' motion to partially dismiss some claims will be rendered.

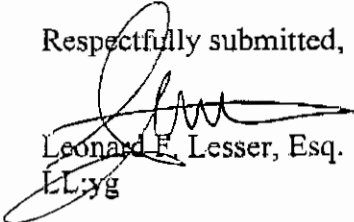
Plaintiffs respectfully believe that efficient use of judicial process now indicates that discovery should commence without awaiting that ruling.

As stated above, defendants have not moved to dismiss the copyright infringement claims asserted in the Complaint. At the very least, discovery should immediately commence concerning those claims.

Accordingly, plaintiffs respectfully request that Your Honor schedule a conference pursuant to Rule 16 of the Federal Rules of Civil Procedure to set a discovery schedule. Once the conference is scheduled, the parties will be obligated to confer pursuant to Rule 26(f) and submit a discovery plan.

I have spoken with counsel for defendants, Jodi Aileen Kleinick, Esq., and defendants do not join in this application.

Respectfully submitted,

  
Leonard F. Lesser, Esq.  
LL:yg

cc: David Fleischer, Esq.  
Jodi Aileen Kleinick, Esq.  
(defendants' counsel of record by e-mail and fax)

5/20/09  
Application denied. Given the fact that the numerous state claims asserted by the plaintiffs are subject to the pending motion to dismiss, it would be highly inefficient to proceed with discovery before the motion is decided.

SO ORDERED.  
James C. Francis IV  
USMJ